

1 PARRA VICTOR
2 CDC No. P-S8682
3 P.O. Box. 799002
4 San Diego CA. 92179
5 In pro se

FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 PARRA VICTOR

12 Plaintiff,

13 V.

14 HERNANDEZ R. et.al.,

15 Defendants,

Case No. 08CV0191 H (CAB)

MEMORANDUM OF LAW IN SUPPORT
OF PRELIMINARY INJUNCTION

17 I Statement of Case

18 On January 31, 2008 Plaintiff Victor Parra a Prisoner brought suit under
19 42 U.S.C. Section 1983. Plaintiff alleges among other things that during a period of 210
20 day while house in ASU Unit 7 and 8 he was denied outdoor exercise yard amounting
21 to more that 5 hours a week causing him psychological deterioration. The Complaint
22 covers the period of September 25, 2006 to April 2007. On November 6, 2007 plaintiff
23 was temporarily housed at Unit 7 and was rehoused to Unit 6 On December 10, 2007.
24 during the stay at Unit 7 plaintiff suffered deprivation of exercise yard and is at risk
25 of suffering mental deterioration and decompensation should he be rehoused back to
26 unit 7 or 8. Plaintiff now seeks a preliminary injunction against defendant
27 Hernandez R. Prison Warden to ensure compliance with the three day schedule
28 of RMA yard at Units 7 and 8.

CR

ARGUMENT

POINT, 1

THE PLAINTIFF IS ENTITLED TO A TEMPORARY PRELIMINARY INJUNCTION

The traditional equitable criteria for granting preliminary injunction relief are (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if the preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases) see *Johnson V. California State Bd. of Accountancy* 72 F.3d 1427 (9th Cir. 1995) [N] 3-4 at 1430 citing *Dollar Rent A car V. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9th Cir. 1985).

In the ninth circuit however to obtain preliminary injunction, moving party must demonstrate either (1) combination of probable success on merits and possibility of irreparable injury, or (2) that serious questions are raised and balance of hardships tips sharply in favor of movant. *Cox Communications PCS, L.P. V. City of San Marcos*, 204 F.Supp. 2d 1260. (S.D. Cal. 2002) see also *Johnson Supra* Id 1430

A. The plaintiff is likely to succeed on the merits.

Plaintiff has a great likelihood of success on the merits. What defendants have done, Intentionally denying plaintiff outdoor exercise yard, a mentally ill Inmate was specifically singled out by the District Court of California, *Madrid V. Gomez* 889 F.Supp 1146 - 1242 (N.D. Cal. 1995) and U.S. Supreme Court *Wilson V. Seiter*, 501 U.S. 294, 304 - 05, 111 S.Ct. 2321, 2327 (1991) *Toussaint V. Yockey*, 722 F.2d 1490, 1492-93 (9th Cir. 1984) *Spain V. Proconier*, 600 F.2d 189, 199 (9th Cir. 1979) (Five hours a week outdoor exercise yard required) *Toussaint V. McCarthy*, 597 F.Supp 1388, 1402, 1412 (N.D. Cal. 1984) (requiring 8 hours a week of outdoor exercise yard). defendant agents have accepted that plaintiff was erroneously issued a rule violation report causing loss of yard see Complaint Exhibit A page 2 line 8-11.

B. The Plaintiff is threatened with irreparable harm.

Plaintiff alleges he is mentally ill and has been denied outdoor exercise yard for

prolonged periods of time while being housed at ASU). Such conduct by prison officials is a clear violation of the eighth Amendment. *Patterson v. Mintzes*, 717 F.2d 284-289 (6th Cir. 1983) (46 days denial of yard stated an eighth amendment claim) *Madrid supra* 889 F.Supp 1146-1242 (N.D. Cal. 1995) (prison officials had actual/subjective knowledge that conditions of isolation and environmental deprivation... presented substantial risk to mentally ill inmate... acted wantonly... when they did nothing to ameliorate the offending conditions). Plaintiff is at risk of decompensation due to ASU conditions. See Doctors D. Huffman statement at Complaint Exhibit B page 20 line 8-9 and Doctors D. Soltzman regarding Inmate R. West. Exb A of Reques for Injunction.

As a matter of law, continuing deprivation of constitutional rights constitutes irreparable harm *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673 (1976) and *Daniels Cable Vision, Inc. v. San Elijo Ranch, Inc.*, 158 F.Supp.2d 1178 (S.D. Cal. 2001) "Preliminary injunction" is provisional remedy designed to preserve status quo and to prevent irreparable loss of rights prior to judgment.

Defendants have exercised such misconduct since 2006 affecting plaintiff. "Past misconduct of course be evidence that future misconduct is likely" *Orantes-Hernandez v. Thornburg*, 919 F.2d 549, 564 (9th Cir. 1990). Parties seeking pretrial injunctive relief must demonstrate they will be exposed to some significant risk of irreparable injury if such relief is denied, *Softman products Co., LLC v. Adobe Systems, Inc.*, 171 F.Supp.2d 1075. Should plaintiff be rehoused back to Unit 7 or 8 the loss of yard will deteriorate plaintiff's gains in therapy, affecting his mental state.

C. The balance of hardships favors the plaintiff

In deciding whether to grant a preliminary injunction, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if the motion is granted. see *Gilland v. Owens*, 718 F.Supp 665, 685 (W.D. Tenn 1989) *Martin v. Int'l Olympic Com.*, 740 F.2d 670, 675 (9th Cir. 1984)

In this case, the present suffering of the plaintiff and his potential suffering if he is rehoused to unit 7 or 8 or the routine denial of yard on thursdays and weekends now beginning to be implemented on unit 6 will be a loss of the gains made through therapy, and may start to

deteriorate mentally again. The suffering defendants will experience if the Court grants the Injunction will consist of taking the plaintiff and Unit 7 Inmates to the schedule RMA Yard Mondays, thursdays and saturdays, something that defendants do, and are obligated to do, for members of the prison population on a daily basis. the defendants hardships amount to no more than business as usual.

D. The relief sought will serve the public interest

In this case, the grant of relief will serve the public interest because it is always in the public interest for prison officials to obey the Law *Washington V. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994) Additionally California has enacted legislation covering mentally disordered offenders serving their parole time to be civilly committed to protect the public Cal. Penal Code section 2962, 2964. And Cal. Penal Code 2684 covering mentally ill prisoners transferred to State Hospitals for psychiatric stabilization. As stated by Doctor Saltzman and Doctor Huffman ASU retention of inmates causes decompensation and denial of exercise yard may regress the gains in stability and impulse control achieved with therapy. It is within the public interest that mentally ill Inmates be stabilized prior release from prison, access to outdoor exercise yard helps Inmate mental state.

POINT II

Usually a litigant who obtains interim injunctive relief is asked to post security. Rule 65 (c), Fed. R. Civ. P. However, the plaintiff is an indigent prisoner and is unable to post security. The court has discretion to excuse an impoverished litigant from posting security. *Orantes-Hernandez V. Smith*, 541 F.Supp.351, 385 [n] 30 (C.D. Cal. 1982) In view of the serious medical danger confronting the plaintiff, the court should grant the relief requested without requiring the posting of security.

CONCLUSION

Because prospective relief will extend no further than necessary to correct the violation of a Federal right see 18 U.S.C. Section 3626(a)(1). For the foregoing reasons, the Court should grant the preliminary injunction in its entirety. pursuant to Fed. R. Civ. P. 65(a)

Dated: February 26, 2008

Respectfully Submitted
Victor Parra
In Prose

VERIFICATIONSTATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Case No. 08CV0191 H (CAB)

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra DECLARE UNDER PENALTY OF PERJURY
 THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;
 I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
 TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
 BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 26 DAY OF: February 2008 AT Richard J.
Donovan Correctional Facility 480 Atty Road. P.O. Box 799002, San Diego CA. 92179

(SIGNATURE) Victor Parra
 (DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, Albert Reynosa J-45769 AM A RESIDENT OF Richard J. Donovan Correctional Facility San Diego
County, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND ~~NOT~~ / NOT
 A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX. 799002, San Diego
 CA. 92179

ON 2-26 2008 I SERVED THE FOREGOING: Memorandum of law
in Support of preliminary Injunction.

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),
 WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED
 AT 480 Atty Road. P.O. Box 799002, San Diego CA. 92179

(To the clerk) --
 U.S. District Court
 Southern District of California
 880 Front Street, Suite 4290
 San Diego CA. 92101-8900

Hernandez R. (Warden)
 Richard J. Donovan Corr. fac.
 P.O. Box. 799006
 San Diego CA. 92179-9006
 Attn: Litigation Coordinator R. Cobb

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
 REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.
 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 2-26-08

Albert Reynosa
 (DECLARANT/PRISONER)

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